

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
NEW HAMPSHIRE STATE HISTORIC PRESERVATION OFFICER,  
NEW HAMPSHIRE GOVERNOR'S OFFICE OF EMERGENCY MANAGEMENT,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**WHEREAS**, the Federal Emergency Management Agency (FEMA) makes assistance available to states, communities, and other eligible entities for disaster housing; hazard mitigation; prevention of and preparedness for emergencies and disasters; and public assistance, such as the repair, restoration and replacement of public infrastructure pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206, (Stafford Act), the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001 et seq., the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2201 et seq., and implementing regulations contained in Title 44 of the Code of Federal Regulations; and

**WHEREAS**, FEMA has determined that implementation of these Programs will result in Undertakings that may affect historic properties listed in or eligible for the National Register of Historic Places (historic properties), and FEMA has consulted with the New Hampshire State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council), pursuant to 36 CFR Part 800, implementing Section 106, herein after referred to as "Section 106", and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. Part 470; and

**WHEREAS**, the State of New Hampshire will receive financial and technical assistance from FEMA and will in turn provide assistance to eligible applicants and as such the New Hampshire Governor's Office of Emergency Management (OEM) will typically be responsible for administering these Programs, has participated in this consultation, and has been invited to enter into this Programmatic Agreement (Agreement); and

**WHEREAS**, FEMA has determined that there are no Federally recognized Indian tribes (Tribes) in the State of New Hampshire; however, the implementation of these Programs may result in Undertakings that have an effect on historic properties that have religious and cultural significance to currently unidentified, non-resident Tribes, and FEMA may request that these Tribes participate as a consulting party to fulfill the requirements of Section 106; and

**WHEREAS**, FEMA, SHPO, OEM, and the Council acknowledge that implementation of these Programs will be more effective if, pursuant to 36 CFR §800.14(b), an Agreement is in place to define roles and responsibilities in the Section 106 review process, eliminate the need for further SHPO and Council review of certain routine activities with little potential to adversely affect historic properties, and promote efficiency so that the effects of Undertakings on historic properties may be considered while minimizing delays to FEMA's delivery of disaster assistance.

NOW, THEREFORE, FEMA, SHPO, OEM, and the Council agree that these Programs will be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities for all Undertakings. FEMA will not approve funding of any Undertaking until it is reviewed pursuant to this Agreement.

## STIPULATIONS

To the extent of its legal authority, and in coordination with OEM, SHPO and the Council, FEMA shall ensure that the following measures are implemented:

### I. LEAD AGENCY COORDINATION

- A. When FEMA is determined to be the Lead Agency, and has obtained the consent of the participating Federal Agency or agencies, FEMA will coordinate the Section 106 review activities of all Federal agencies that participate in Undertakings funded by the Programs.
- B. If an applicant requests FEMA funding for a project previously reviewed by another Federal agency and for which the Section 106 consultation has been completed, additional Section 106 consultation will not be required on FEMA's part, as long as the project is identical. The applicant and/or OEM shall certify to FEMA that a project has not changed in scope or detail (i.e., that the project plans bear the same date as those referenced in the previous comment letter) and document prior SHPO concurrence relative to this undertaking by submitting the SHPO's concurrence or comment letter for inclusion in FEMA's project records.

### II. APPLICABILITY

- A. This Agreement applies to the Programs implemented after execution by all parties and will remain in effect until the expiration of the Agreement. In the event that a specific disaster declaration occurs prior to the expiration date, the Agreement shall remain in effect for that specific disaster so long as the disaster remains open for funding.
- B. FEMA has determined that the following types of activities have limited potential to cause effects to historic properties, and FEMA has no further Section 106 responsibilities, pursuant to 36 CFR § 800.3(a)(1):
  - 1. Implementation of the Programs as related to assistance to individuals and households (Sections 408 of the Stafford Act, Individuals and Households Program), with the exception of ground disturbing activities and construction related to temporary or permanent housing (44 CFR Part 206.107(b)(4)) {"Permanent housing construction"};
- C. This Agreement will only apply to historic properties that retain National Register integrity, pursuant to 36 CFR Part 60.

- D. FEMA will have met its Section 106 responsibilities when the undertaking is in conformance with one or more of the Allowances in Appendix B – Allowances: Undertakings Not Requiring SHPO or Council Review. FEMA will determine when an Undertaking meets the applicable criteria listed in Appendix B. FEMA will document this determination in the project file and may authorize the release of funding for the Undertaking.
1. When historic structures are involved, determinations of eligibility will be made by FEMA staff who meet the qualifications as stipulated in III.A.1. When requested, SHPO staff will be available as resources and for consultation through written requests, telephone conversations or electronic media.
  2. Qualified FEMA staff will document in the FEMA project file the reason for reaching its determination and/or for selecting one or more of the Allowances in Appendix B.
- E. For all other activities, FEMA will conduct Section 106 review in accordance with Stipulation V. or VI of the Agreement.

### III. GENERAL

- A. Professional Qualifications:
1. FEMA will use Federal, New Hampshire State agency, or contractor staff who meet the Secretary of Interior's (SOI's) Professional Qualifications Standards (Qualifications), as determined by FEMA's Federal Preservation Officer (FPO), in the required disciplines, in ensuring compliance with this Agreement.
  2. FEMA acknowledges that some individuals or groups, including Native American groups, possess special expertise related to Traditional Cultural Properties, and FEMA may utilize this expertise and consult with them for the purpose of site identification and determining if any such properties are eligible for the National Register, and may as per IV.A.3, invite them to participate as consulting parties in the Section 106 process.
- B. All time designations will be in calendar days. If any signatory does not comment on a determination related to a proposed action within an agreed upon timeframe, FEMA may assume the signatory's concurrence with FEMA's determination.
- C. FEMA responsibilities:
1. FEMA may request that Federal, New Hampshire State agency, or applicant staff who meet the Qualifications in III.A.1 conduct the identification, evaluation of National Register eligibility and determination of effect for historic properties on behalf of FEMA, as described in 36 CFR 800.4(b, c).

2. FEMA will review all National Register eligibility and effect determinations resulting from the performance of these delegated activities, prior to submitting such determinations to the SHPO.
3. FEMA will provide the SHPO and Council with an annual written report of activities of the previous calendar year on or before March 31st of the following year, for each year that this Agreement is in effect. An extension may be requested if FEMA is fully committed to delivering disaster assistance. The parties will review this information to determine if amendments to the Agreement are necessary. Upon the request of any signatory, a meeting will be held subsequent to the issuance of the annual report to review the report and/or discuss issues in greater detail. This Annual Report will summarize the actions taken to implement the terms of this Agreement, including:
  - a. A summary of projects by FEMA program;
  - b. The number of properties added to the New Hampshire Historical Inventory and the New Hampshire Archaeological Inventory;
  - c. A summary of the treatment measures undertaken;
  - d. A summary of archaeological activities conducted under the program;
  - e. Suggestions, if any, for additional actions that could be considered for inclusion in Appendix B.
4. Prior to authorizing the release of funds for individual projects requiring special conditions pursuant to this agreement, FEMA will fully inform the OEM of all stipulations and conditions to insure that they are understood and conveyed to the Sub-grantee, pursuant to III.E.1.

D. SHPO responsibilities:

1. The SHPO, if requested, will concur or non-concur with FEMA's National Register eligibility and determinations of effect within the timeframes required by this Agreement.
2. The SHPO may delegate some or all of its responsibilities under this Agreement to persons who are not currently members of the SHPO staff and who will serve as SHPO representatives with respect to the actions and decisions required by this Agreement. If, as a result of a specific Disaster, SHPO staff is unable to meet the demands of the situation, SHPO will consult with FEMA at the earliest possible time to seek a solution.

E. OEM Responsibilities:

1. OEM, as grantee, will ensure that all sub-grantees are fully informed as to their responsibilities as stipulated in this Agreement. This includes providing them with guidance about in-kind repairs, pursuant to the Secretary of Interior's Standards, and insuring they understand and acknowledge any additional stipulations that may be placed upon construction or repair or hazard mitigation projects as a result of Section 106 consultation or other means of compliance as provided for in this Agreement. OEM will also ensure that sub-grantees understand that failure to comply with the terms of this Agreement could jeopardize Federal participation in the project.
2. Although the administrative action of acquiring properties in buyout projects are exempt from Section 106 review, as per Appendix B, VIII, OEM will ensure that applicants secure the properties from physical alteration, illegal entry, and damage until the requirements of the Agreement are fulfilled. OEM will ensure that applicant communities agree to these provisions as a condition of the grant before FEMA will release any project funding.

**IV. INITIAL COORDINATION FOLLOWING DECLARATION OF THE DISASTER**

Upon the Presidential declaration of a disaster, FEMA, through OEM, will notify SHPO of the Declaration and provide a list of the designated counties. Within 10 days of establishing the Disaster Field Office (DFO) in New Hampshire, FEMA will coordinate with the SHPO and OEM to establish points of contact and protocols for the implementation of the Agreement. FEMA will further provide information to the SHPO about the types of damages identified during the Preliminary Damage Assessment (PDA). FEMA and OEM will provide guidance on program issues and processes. OEM and FEMA, as appropriate, will also present information related to the Section 106 review process to all applicants, at the applicants' briefings and kickoff meetings.

A. FEMA will:

1. In the aftermath of the Disaster, determine with the SHPO those standing structures listed in the National Register (NR) or New Hampshire Historical Inventory identified during the PDA that have not retained National Register integrity pursuant to 36 CFR Part 60. For those undertakings involving historic structures that lack integrity as agreed by FEMA and SHPO, FEMA will — terminate its Section 106 review for that undertaking and document the decision in the project file. If FEMA and the SHPO do not agree on whether a listed property has retained its integrity, FEMA will review all Undertakings that may affect the property in accordance with Stipulations V. through VII.
2. Consult with other Federal agencies having jurisdiction for Undertakings related to the Programs to ensure compliance with applicable historic preservation laws and regulations.

3. Develop with the SHPO a feasible plan for involving the public in the Section 106 review process. In doing so, FEMA shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking. FEMA, in consultation with the SHPO, may invite interested groups or persons to participate as consulting parties in the Section 106 process in accordance with 36 CFR 800.3(f) ("Identify other consulting parties").
4. If FEMA is informed that a National Historic Landmark (NHL) site has been damaged as a result of the disaster, FEMA will promptly notify the SHPO and the Secretary's National Historic Landmarks Program Manager at the National Park Service Regional Office in Philadelphia.

B. The SHPO will:

1. Provide FEMA with available information about historic properties within the declared Disaster area, including:
  - a. properties listed in or previously determined eligible for the National Register through a Section 106 review or by the Secretary of the Interior;
  - b. properties listed in the New Hampshire Historical Inventory;
  - c. geographic areas with high potential for archaeological resources, and areas where it is known that there are not any archaeological resources; and
  - d. previously identified Traditional Cultural Properties, and known properties of religious and cultural significance to special interest groups.
2. Work with FEMA to jointly compile a list of previously identified or unevaluated historic properties, and geographic areas with a high potential for unidentified historic properties.
3. Identify staff or consultants to assist FEMA staff with its Section 106 responsibilities, and to identify, in coordination with FEMA, specific activities that the SHPO may perform at FEMA's request for specific projects.
4. Assist FEMA in identifying any groups, organizations, or individuals that may have an interest in historic properties affected by the Disaster. FEMA and the SHPO will jointly contact these interested parties to inform them of this Agreement and to request information on the location of damaged historic properties.

5. Assist local jurisdictions in identifying staging and landfill sites for debris disposal, chipping of vegetation debris, or other types of large scale work efforts, if applicable, that will have minimal or no effect on historic properties. Details will be worked out during the first post-disaster meeting between FEMA and SHPO, based on the scale and nature of the undertakings.

## V. EXPEDITED PROJECT REVIEW FOR EMERGENCIES

- A. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 (36 CFR §800.12(d) ("Emergency situations: Applicability")).
- B. As a result or in anticipation of the Disaster, but within 30 days after the time of discovery of the emergency, FEMA may be requested to authorize funding **for emergency protective measures in response to an immediate threat to human health and safety or improved property**, which may adversely affect historic properties. For all Undertakings that the Federal Coordinating Officer (FCO) determines are of an emergency nature as defined in Section 102(1) of the Stafford Act, and are not exempt from Section 106 review in accordance with Stipulation V.A. above, FEMA will conduct the following expedited review:
  1. The expedited review period will begin at the time that FEMA determines that an emergency action is required, and will remain in effect for the time necessary to implement this expedited review, but for not more than 30 days after the time of discovery of the emergency.
  2. The FCO will certify in writing to the SHPO the need for FEMA to conduct expedited project review for individual Undertakings. Should FEMA determine that it is necessary to extend the expedited review period beyond 30 days, FEMA will, in 30-day increments, as needed, request an extension in writing from the SHPO and Council prior to the expiration of the 30 days. FEMA will immediately assume the SHPO's and Council's concurrence unless otherwise notified.
  3. If it appears that an emergency action will adversely affect a historic property during this expedited review period, FEMA will provide the SHPO with available information about the condition of the property, the proposed action, and prudent and feasible measures that would take the adverse effect into account, requesting the SHPO's comments. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. In all cases, FEMA will be clear that an "expedited project review" is being requested. The SHPO will respond to any FEMA request for comments within 3 days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.

4. If FEMA does not accept the recommendations provided by the SHPO pursuant to this Stipulation, or the SHPO objects to FEMA's proposal to use the emergency review procedure and/or proposed treatment measures, FEMA will consult with the SHPO to resolve the dispute. If FEMA is unable to resolve the dispute, FEMA will seek the Council's comments. The Council will provide final comments to FEMA within 3 days after receipt of FEMA's request, unless FEMA determines the nature of the emergency action warrants a shorter time period.

## VI. STANDARD PROJECT REVIEW

The signatories of this agreement will carry out the following review for all non-emergency Undertakings related to the delivery of FEMA's disaster response and recovery program and FEMA's other programs, with the noted exception of the different time frames for SHPO and consulting party comments relative to the two types of Programs.

- A. Area of Potential Effects (APE): For all project reviews of standing structures the APE will be the individual facility (as defined in 44 CFR §206.201(c)) when an Undertaking is limited to the in-kind repair or rehabilitation of the facility's interior or exterior. FEMA will establish the APE in consultation with the SHPO for all other Undertakings, including those that may affect archaeological properties. FEMA will also identify and invite other appropriate parties (such as local governments and the public) to provide information related to the APE.
- B. In accordance with 36 CFR §800.4(b, c) ("Identify historic properties" and "Evaluate historic significance"), FEMA will determine, in consultation with the SHPO, if the APE contains properties or is likely to contain properties (including archaeological properties) that are listed in or eligible for the National Register.
- C. If no historic properties are present, or if an Undertaking is designed to avoid affecting the character defining features or integrity of such historic properties as defined in 36 CFR §800.16(1), FEMA will make a determination of "no historic properties affected" in accordance with 36 CFR §800.4(d)(1). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation. Unless the SHPO or any consulting party objects to this determination within 10 days after receipt, FEMA will complete the Section 106 review and may approve funding. In the case of FEMA's other programs, the SHPO or any consulting party shall make any objections known within the standard 30 days as provided for in 36 CFR §800.4(d)(1).
- D. If an Undertaking may affect identified historic properties, or if the SHPO objects to the determination of "no historic properties affected" within 10 days after receipt, FEMA will consult with the SHPO to apply the criteria of adverse effect, pursuant to 36 CFR §800.5(a)(1), or determine if the Undertaking meets the Secretary of Interior Standards for the Treatment of Historic Properties (Standards), or any other applicable Secretary of Interior's Standards. FEMA will also consider any views provided by consulting parties and the public related to such effects.



1. For standing structures only:

- a. If FEMA and the SHPO agree that an Undertaking, as defined in 36 CFR 800.16(y), does not meet the adverse effect criteria or that it meets the Standards, FEMA will make a determination of "no adverse effect" pursuant to 36 CFR §800.5(b). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation pursuant to 36 CFR §800.5(c) and specified in Section §800.11(e). Unless the SHPO or any consulting party objects within 14 days after receipt of the notification, FEMA will complete the Section 106 review and may approve funding. In the case of FEMA's other programs, the SHPO or any consulting party shall make any objections known within 30 days.
- b. If the SHPO objects to the "no adverse effect" determination, FEMA will request through OEM that the applicant revise the scope of work to substantially conform to the Standards, in consultation with the SHPO and consulting parties. FEMA also will ensure that the revised scope of work is reviewed for funding eligibility. If the applicant modifies the scope of work to address the objections, FEMA will notify the SHPO and all consulting parties, and provide supporting documentation. Unless the SHPO or any consulting party objects within 14 days after receipt, FEMA will complete the Section 106 review and may approve funding. In the case of FEMA's other programs, the SHPO or any consulting party shall make any objections known within the standard 30 days as provided for in 36 CFR §800.5(c).
- c. If the applicant is unable to, or will not modify the Undertaking to meet the Standards or address the objections, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

2. For archaeological properties only:

- a. If there is a reasonable potential for archaeological properties to be present within the APE, FEMA will consult with the SHPO to determine the level of effort necessary to identify the anticipated type and location of these properties. Any resulting studies must meet the Secretary of the Interior's *Standards and Guidelines for Archeology* and in a format that may be agreed to by FEMA and SHPO.
- b. If the SHPO or any other consulting party objects within 14 days, or in the case of FEMA's other programs, within 30 days, that identified archaeological properties can be avoided through redesign of an Undertaking, or through procedures/requirements agreed upon among all the consulting parties, or concurs that there will be an adverse effect, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

3. For all other historic properties where standards do not exist or where avoidance is not easily achieved, such as properties of religious and cultural importance that meet the National Register criteria, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

## **VII. RESOLUTION OF ADVERSE EFFECTS FOR HISTORIC PROPERTIES**

- A. If FEMA determines that an Undertaking will adversely affect a historic property, FEMA will determine if the Undertaking will be reviewed in accordance with 36 CFR §800.6(b) ("Resolve adverse effects") resulting in a Memorandum of Agreement (MOA), or addressed through a Secondary Programmatic Agreement (Secondary Agreement). Following this decision, FEMA will notify the SHPO, all other consulting parties, and provide the Council with an adverse effect notice, including documentation in accordance with 36 CFR §800.11(e), subject to the confidentiality provisions of Sec. §800.11(c) with respect to properties of religious or cultural significance.
  1. Memorandum of Agreement: FEMA may develop an MOA in accordance with 36 CFR §800.6(c) to outline measures to avoid, minimize or treat adverse effects to historic properties. FEMA may consider reasonable alternate treatment measures that serve an equivalent or greater public benefit than standard measures or archaeological data recovery, while promoting the preservation of historic properties. FEMA will attempt to identify all such feasible measures in consultation with the SHPO and other consulting parties identified in accordance with Section §800.2(c), where appropriate. Alternate measures may include, but are not limited to, preservation planning, interpretive programs, or development of a historic properties database with Geographic Information Systems.
  2. Secondary Programmatic Agreement: FEMA, the SHPO, OEM, the Council, if participating, and other consulting parties may consult to develop a Secondary Agreement to require programmatic conditions and/or treatment measures for multiple, but similar Undertakings by an applicant.
- B. When an Undertaking will adversely affect an archaeological property, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery or other scientific means. To accomplish this objective, FEMA will follow the Advisory Council's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" published in the Federal Register (64 FR 95N 27085-27087, May 18, 1999) and consult with the other consulting parties to prepare a data recovery plan. For sites where FEMA determines extraordinary circumstances exist, for example, the presence of human remains or items of cultural patrimony as defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), or when other treatment measures are appropriate, FEMA will consult further with the other consulting parties to develop an appropriate approach to resolving the adverse effects.

- C. FEMA will also involve the public in the resolution of adverse effects in accordance with 36 CFR §800.6(a)(4) ("Involve the public").
- D. When an Undertaking will adversely affect a National Historic Landmark (NHL), FEMA also will notify and invite the Secretary of the Interior (Secretary) to participate in consultation, pursuant to 36 CFR §800.10 ("Special requirements for protecting NHLs"). Notice shall be sent to the Secretary's National Historic Landmarks Program Manager at the National Park Service Regional Office in Philadelphia. When the Council participates in consultation related to an NHL, the Council will report the outcome of the consultation to the Secretary and the FEMA Director.

#### **VIII. CHANGES TO AN APPROVED SCOPE OF WORK**

OEM will notify FEMA as soon as practicable of any proposed change to the approved scope of work for an Undertaking related to a historic property. FEMA will then consult with the SHPO to determine if the change will have an effect on the property. FEMA may authorize the applicant to proceed with the change if it meets an Allowance (Appendix B) or if, for a standing structure, the change can be modified to conform to the Standards, or any other applicable Secretary of Interior Standards. If FEMA determines that the change does not meet an Allowance, or if FEMA and the SHPO determine that the change cannot be modified to conform to the Standards, or any other applicable Secretary of Interior Standards, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

#### **IX. UNEXPECTED DISCOVERIES**

- A. OEM will notify FEMA as soon as practicable if it appears that an Undertaking will affect a previously unidentified property that may be historic, or affect a known historic property in an unanticipated manner. OEM will require the applicant to stop construction activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the property until FEMA concludes consultation with the SHPO.
- B. FEMA will notify the SHPO of the discovery at the earliest possible time and consult to develop actions to take into account the effects of the Undertaking. FEMA will notify the SHPO of any time constraints, and all parties will mutually agree upon timeframes for this consultation. OEM and the applicant may participate in this consultation. FEMA will provide the SHPO with written recommendations to take into account the effects of the Undertaking. SHPO will respond to the written recommendation within no more than 15 days of their receipt.
- C. If the SHPO does not object to FEMA's recommendations within the agreed upon timeframe, FEMA will require the applicant to modify the scope of work to implement the recommendations. If the SHPO objects to the recommendations, FEMA and the SHPO will consult further to resolve this objection through actions including, but not limited to, identifying project alternatives that may result in the Undertaking having no adverse effect on historic properties, or proceeding in accordance with Stipulation VII.

- D. If human remains are discovered during the course of project implementation, the sub-grantee shall stop construction activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm prior to implementing the procedures regarding the discovery of human remains as codified in *Revised Statutes Annotated* 227-C: 8a-8j: "Historic Preservation - Discovery of Remains and Notification of Authorities, et seq."

## **X. DISPUTE RESOLUTION**

- A. Should the SHPO, OEM, or a consulting party object within the timeframe provided by this Agreement to any plans, specifications, or actions provided for review pursuant to this Agreement, FEMA will consult further with the objecting party to seek resolution. If FEMA objects within any such timeframe to any such plans, specifications, or actions, FEMA will consult further with the other parties to seek resolution. If FEMA determines within 14 days of receipt of an objection that the objection cannot be resolved, FEMA will forward to the Council all documentation relevant to the dispute, including FEMA's proposed resolution to the objection.
- B. Any recommendation or comment provided by the Council will pertain only to the subject of the dispute. The responsibility of the signatories to implement all actions pursuant to this Agreement that are not subject to the dispute will remain unchanged.

## **XI. ANTICIPATORY ACTIONS**

- A. FEMA will not grant assistance to an applicant who, with intent to avoid the requirements of the Agreement or Section 106, has intentionally significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. However, after consulting with the SHPO and Council, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant, and will complete consultation for the Undertaking pursuant to Stipulation VII.
- B. FEMA will specifically advise OEM of this Anticipatory Actions Stipulation and will require that OEM advise its applicants in writing at their kickoff meetings that they may not initiate construction on projects for which they are seeking Federal funding prior to compliance with this Agreement. OEM will also advise its applicants that they may jeopardize Federal funding if construction is initiated prior to compliance with this Agreement.

## **XII. DURATION, AMENDMENTS, AND TERMINATION**

- A. This Agreement shall remain in effect from the date of execution for a period not to exceed 7 years or until FEMA, in consultation with all other signatories, determines that the terms of this Agreement should be terminated pursuant to either Stipulation XII.C. or

Stipulation XII.D below. Upon such determination, FEMA will provide all other signatories with written notice of the determination and termination.

- B. If any signatory to the Agreement determines that the Agreement cannot be fulfilled, or that an amendment to the terms of this Agreement must be made, the signatories will consult to seek amendment of the Agreement. The process of amending this Agreement shall be the same as that exercised in creating the originating Agreement.
- C. FEMA, the SHPO, OEM, or the Council may terminate this Agreement by providing 30 days' written notice to the other parties, provided that the parties will consult during this period to seek amendments or other actions that would prevent termination. Termination of this Agreement will require compliance with 36 CFR Part 800.
- D. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR §800.14(a), or of supplanting regulations.

### **XIII. IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT**

- A. This Agreement may be implemented in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a complete copy. This Agreement will become effective on the date of the last signature.
- B. Execution of this Agreement by the Council and implementation by FEMA evidences that FEMA has afforded the Council a reasonable opportunity to comment on all FEMA Programs identified in the Preamble to this agreement and that FEMA has satisfied its Section 106 responsibilities for all Undertakings.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

By: John R. D'Araujo, Jr.  
John R. D'Araujo, Jr.  
Assistant Director  
Response and Recovery Directorate

Date: 8/8/02

By: Anthony S. Lowe  
Anthony S. Lowe, Administrator,  
Federal Insurance and Mitigation Administration

Date: 8/8/02

By: Daniel A. Craig  
Daniel A. Craig, Regional Director,  
Region I

Date: 8/28/02

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler  
John M. Fowler, Executive Director

Date: 9/23/02

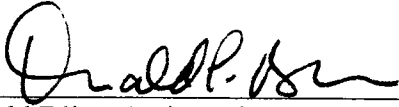
**NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES**

By: James McConaha  
James McConaha, State Historic Preservation Officer

Date: 4/22/02



NEW HAMPSHIRE GOVERNOR'S OFFICE OF EMERGENCY MANAGEMENT

By:   
Donald Bliss, Acting Director

Date: 25 March 2002

## **APPENDIX A**

### **ADDENDUM TO THE PROGRAMMATIC AGREEMENT**

**Intentionally left blank to incorporate potential Tribal involvement in the future.**

## APPENDIX B: Allowances (Undertakings Not Requiring SHPO or Council Review)

This list of Allowances enumerates program activities that will have limited effect on historic properties. Projects falling under one or more of these allowances will be reviewed by FEMA, but do not require review by the SHPO or Council pursuant to Stipulations II-VI. This list may be revised without amending this Agreement, with a letter concurred by FEMA and the SHPO.

When referenced in an Allowance, "in kind" shall mean that it is the same material and the result will match all physical and visual aspects of existing historic materials, including form, color, and workmanship. "In kind" mortar will also match the strength, content, color and joint tooling of historic mortar.

- I. **GROUND DISTURBING ACTIVITIES AND SITE WORK, provided that any work will not disturb any previously undisturbed soil.**
  - A. Ground disturbing activities related to the repair, replacement, or hardening of any footings, foundations, retaining walls, other slope stabilization systems (i.e., gabion baskets, etc.), and utilities (including sewer, water, storm drains, electrical, gas, communication, leach lines, and septic tanks), *provided the excavation will not disturb more soil than previously disturbed*. This Allowance refers to archaeological review. The Allowance also applies to historic review of such features that are listed in or eligible for the Register, only if the work is in kind.
  - B. Substantially in kind repair, replacement, or upgrade of culvert systems within rivers, streams, or drainage ways, including any modest increase in capacity, *provided the excavation will not disturb more soil than previously disturbed*. For large culverts, this Allowance precludes the use of a temporary bridge or culvert, or related approach work. Stone culverts and stone arches are specifically excluded from this Allowance.
  - C. Repair, replacement, or hardening of utilities under existing improved roads/roadways, or within other previously disturbed rights of way.
  - D. In kind repair or replacement of driveways, parking lots, and walkways.
  - E. In kind repair or replacement of fencing and other freestanding exterior walls.
  - F. Substantially in kind repair or replacement of metal utilitarian structures (i.e. pump houses, etc.), including major exposed pipelines. Modern materials may be used, provided their finish is compatible with the context of the site. *Structures such as bridges, water towers, and antenna towers are not considered metal utilitarian structures for the purposes of this Allowance.*

- G. Installation of temporary structures for uses such as classrooms or offices. This Allowance does not apply to such structures in historic districts or in archaeologically sensitive areas as determined through consultation between FEMA and SHPO.
  - H. Installation of scaffolding, temporary barriers (i.e., chain link fences, etc.), polyethylene sheeting, or tarps, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.
  - I. In kind repair or replacement of hardscaping and utilities, such as paving, planters, trellises, irrigation, and lighting.
  - J. In kind repair or upgrade to codes and standards of existing piers, docks, boardwalks, boat ramps, and dune crossovers, provided the footprint will substantially match the existing footprint.
  - K. Debris collection from public rights of way, transport, and disposal in existing licensed solid waste facilities. *This Allowance does not include establishment or expansion of debris staging or disposal areas.*
  - L. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, to restore the facility to its pre-disaster condition, provided the sediment is used to repair eroded banks or is disposed at an existing licensed or permitted spoil site.
  - M. Dewatering flooded developed areas.
- II. BUILDINGS**, that are more than 50 years old (or less than 50 years old if of exceptional significance) and are listed on or eligible for listing on the National Register of Historic Places, when all work is consistent with the Secretary of the Interior's Standards
- A. Interior Floors, Walls, Stairs and Ceilings
    - 1. In kind repairing, replacing, retaining, preserving, protecting, or maintaining of materials or features.
    - 2. In kind repair of interior floors, walls and ceilings. This Allowance also applies to the repair of interior finishes, including plaster and wallboard, provided the repair is restricted to the damaged area and does not affect adjacent materials. The Allowance does not apply to historic architectural finishes such as decorative plaster trim, or plaster substrates for decorative materials such as murals, gold leaf, etc.
    - 3. Repair or replacement of suspended or glued ceiling tiles.

4. Installation of grab bars and other such minor interior modifications for handicapped accessibility, when significant interior features (such as trim or architectural details) are not altered.
5. Non-destructive or concealed testing for hazardous materials (lead paint, asbestos, etc.) or damage assessment.

B. Utilities and Mechanicals

1. Minor interior mechanical (HVAC), electrical, or plumbing work, limited to upgrading, elevation, or in kind replacement, with the exception of historic fixtures, which must be repaired in kind for this Allowance to apply. This Allowance does not apply to exposed new ductwork.
2. Replacement of interior fire detection, fire suppression, or security alarm systems. This Allowance does not apply to exposed wiring such as surface mounted wiring, conduits, piping, or to the installation of new systems where they will affect significant interior features.

C. Windows and Doors

1. In kind repair or replacement of windows and doors damaged by the disaster, where profiles, elevations, details and materials match those of the original windows and doors.
2. Replacement of windowpanes, provided the result does not alter the existing window material and form. Also, historic windows or glazing may be treated with clear window films. This Allowance does not apply to the replacement of existing archaic or decorative glass.
3. In kind repair of historic door and window hardware.

D. Exterior Walls, Cornices, Porches and Foundations

1. Repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding, and chemical cleaning.
2. In kind repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or trim, as long as the replacement pieces match the original in detail and material.
3. Substantial in kind repair or in kind replacement of signs or awnings.
4. Temporary stabilization bracing or shoring, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.

5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view and disturbed historic fabric is restored in kind.
6. In kind repair or reconstruction of concrete/masonry walls, parapets, chimneys, or cornices, including comparable brick, and mortar that matches the color, strength, content, rake, and joint width, where occurring.
7. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
8. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in kind, including mortar that matches the color, content, strength and rake, where occurring.

E. Roofing

1. In kind repair, replacement, or strengthening of roofing, gutters, or downspouts. Also, cement asbestos shingles may be replaced with asphalt based shingles, and untreated wood shingles may be replaced with fire resistant wood shingles.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping to complement the color of adjacent surfaces.
2. In kind replacement of insulation systems, provided that decorative interior plaster, woodwork, or exterior siding is not altered. This Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. Also, the Allowance does not apply to insulation systems that do not include an adequate vapor retarder, or to work in enclosed spaces that are not vented.

G. Seismic Upgrades

1. The installation of the following seismic upgrades, provided that such upgrades are not visible on the exterior or within character defining historic interiors: cross bracing on pier and post foundations; metal fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.

H. Purchase, expansion, renovation, modification, repair, relocation or demolition of an existing structure that is less than fifty years old and that is not located in or adjacent to a historic district is exempt from SHPO and Council review.

**III. ROADS AND ROADWAYS, provided that excavation or site work will not disturb more soil than previously disturbed**

- A. Repair of roads to pre-disaster geometric design standards and conditions using in kind materials, number and width of lanes, shoulders, medians, curvature, grades, clearances, and side slopes, provided that all work is conducted from within the existing roadway.
- B. Repair of road composition with in kind surface materials to maintain pre-disaster size, traffic capacity, and load classifications of motor vehicles, including the reshaping and compacting of road bed soil and the repair of asphaltic or Portland cement concrete pavements. *This Allowance does not apply to the repair of brick or stone paving, or the regrading of native materials to reconstruct the roadbed.*
- C. Repair, replacement, or upgrade of culverts beneath roads or within drainage ditches, including any modest increase in capacity for mitigation purposes or to meet current codes and standards, *provided that they substantially conform to the preexisting function and locations, and that related excavation will not disturb any previously undisturbed area. Stone culverts and stone arches beneath roadways are specifically excluded from this Allowance.* This Allowance also applies to related concrete or synthetic features (such as headwalls and wing walls), *provided that the area of potential effect (APE) does not extend beyond the area of previous disturbance. For large culverts, this Allowance precludes the use of a temporary bridge or culvert, or related approach work that extends beyond the existing footprint.*
- D. Repair of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance systems.
- E. In kind repair of road lighting systems, such as period lighting.
- F. In kind repair of road appurtenances such as curbs, berms, fences, and sidewalks that are not brick or stone.
- G. In kind repair of roadway safety elements such as barriers, guardrails, and impact-attenuation devices. In the case of guardrails, the addition of safety end treatments is allowed.
- H. Reestablishment and/or upgrading of existing ditches to original width.

**IV. BRIDGES**

- A. In-kind repairs of abutments where no excavation or new construction is proposed.

**V. UTILITIES**

- A. Replacement or relocation of existing utility poles between the edge of a sidewalk and road.

**VI. AIRPORTS**

- A. Repair of existing runways.
- B. In-kind repair of safety components, including beacons, on airport property, as long as no new access is required.
- C. In-kind replacement or repair of existing beacons not on airport property, as long as no new access is required.

**VII. RAILROADS**

- A. In-kind repair or replacement of railroad safety components.
- B. Repair of railroad crossings, within the area of prior disturbance.
- C. In-kind replacement of existing bolt-connected railroad tracks and wood ties.

**VIII. ACQUISITIONS**

- A. Funding the administrative action of acquiring properties in buyout projects, including the real estate transaction and excluding demolition.

**IX. FEES AND SERVICES**

- A. Miscellaneous labor costs.
- B. Rental or purchase of vehicles or other motorized equipment.
- C. Builders fees.
- D. Fees for architectural, engineering or other design services, provided the services will not result in an adverse effect on a property listed in or eligible for the Register.
- E. Reimbursement of an applicant's insurance deductible, not to exceed \$1,000.



## **X. HUMAN SERVICES**

The following activities relating to implementation of Sections 408, 409, 412, 415, and 416 of the Stafford Act:

- A. The minimal repair program.
- B. Temporary housing for disaster victims whose homes are uninhabitable, with the exception of potential archeological issues related to temporary housing sites.
- C. Disaster unemployment assistance.
- D. Legal services.
- E. Crisis counseling.
- F. The Cora Brown Fund, to assist victims of natural disasters for those disaster-related needs that are not met by government agencies or private organizations.

## **XI. VECTOR CONTROL**

- A. Application of pesticides to reduce adverse public health effects, including aerial and truck mounted spraying.

## **XII. OTHER PROGRAM ACTIVITIES**

The following program activities derived from 44 CFR §10.8 that are not otherwise provided for:

- A. Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of normal day-to-day activities and disaster related activities;
- B. Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions;
- C. Studies that involve no commitment of resources other than manpower and associated funding;
- D. Inspection and monitoring activities, granting of variances, and actions to enforce Federal, state, or local codes, standards or regulations;
- E. Training activities and both training and operational exercises utilizing existing facilities in accordance with established procedures and land use designations;

- F. Procurement of goods and services for support of day-to-day and emergency operational activities, and the temporary storage of goods other than hazardous materials, so long as storage occurs on previously disturbed land or in existing facilities;
- G. Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements;
- H. Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way;
- I. Planting of indigenous vegetation;
- J. Granting of community-wide exceptions for flood proofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program;
- K. Actions conducted within enclosed facilities where all airborne emissions, waterborne effluent, external radiation levels, outdoor noise, and solid and bulk waste disposal practices comply with existing Federal, state, and local laws and regulations;
- L. The following planning and administrative activities in support of emergency and disaster response and recovery:
  - 1. Activation of the Emergency Support Team and convening of the Catastrophic Disaster Response Group at FEMA headquarters;
  - 2. Activation of the Regional Operations Center and deployment of the Emergency Response Team, in whole or in part;
  - 3. Deployment of Urban Search and Rescue teams;
  - 4. Situation Assessment including ground and aerial reconnaissance;
  - 5. Information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation.
- M. The following emergency and disaster response, recovery and hazard mitigation activities authorized under the Stafford Act:
  - 1. Unemployment Assistance (Sec. 410);
  - 2. Food Commodities (Sec. 413);
  - 3. Community Disaster Loans (Sec. 417);
  - 4. Emergency Communications (Sec. 418);
  - 5. Emergency Public Transportation (Sec. 419); and
  - 6. Federal Emergency Assistance (Sec. 502).

## APPENDIX C: SUBMITTALS FOR SECTION 106 REVIEW

The following is a list of documents that can help facilitate the Section 106 Historic Preservation Review for projects under consideration for FEMA funding. If this documentation exists, it will be used by FEMA to make determinations of effect and as submittals to the SHPO for project review. The level of documentation should be commensurate with the scope and nature of the project. Items A-C and E should be provided in all cases. (Note: This information will also substantively improve the environmental review conducted under NEPA.)

- A. A clear written description of the entire scope of work. Information should include the current conditions, any alternatives that may be under consideration, and any additional work, not funded by FEMA that will be performed at substantially the same time. The description should be explicit about the size or extent of the area of potential effects (APE), including all associated construction or access areas (eg. staging or stockpile areas, temporary roads, bridges, walkways, work areas, etc.) that will be required to complete the project. Include any studies, plans, drawings, sketches, or schematics, as may be available, to help understand the entire project.
- B. Original photos sufficient to show the proposed project area in the context of its surroundings and any details necessary to understand the entire scope of the project.
  - Photos should be keyed to accompanying text and/or maps.
  - If the project is a building, show all sides of the entire building (at least from opposite corners), and the context of the building in its setting, including the surrounding buildings.
  - Where interior features of a building are of historic importance, quality photographs should be provided of any historic decorative wall or ceiling treatments or highly decorative architectural elements.
  - If the project is in a rural setting, show the project area in the foreground with the background of the surrounding area in all four directions. Photo coverage should be detailed enough to illustrate all elements included in the project design. Where the project is linear, photos should include all environments within the APE.
  - For identification purposes, original color photographs or high-resolution digital images are preferred. For National Register documentation, special conditions may apply.
- C. Location maps (e.g., USGS maps and City maps), as necessary to show the undertaking in the context of its surroundings. For projects in rural settings or for projects with ground disturbing activities, USGS maps are mandatory. For identification purposes, maps may be computer generated using GIS systems or such map-generating programs as Terraserver or Maptech.
- D. Documentation of any other Agency's environmental determinations within the scope of the project and surrounding area.

- E. Documentation of the date of construction of the original, existing facility (e.g., building permit records, tax records, newspaper accounts, architectural drawings, etc.), or a circa date provided by a historic preservation professional.
- F. Where projects are complex, plans showing the limits of proposed excavations or other ground-disturbing activities associated with the project.
- G. Location maps, in addition to those provided above, showing the project within local, state, or national historic districts.
- H. Local, State, or National Landmark listings of historic properties within the project area, including the National Register of Historic Places.
- I. Any existing cultural resource surveys or reports describing the archaeological/historic properties (e.g., archaeological sites, historic buildings, historic landmarks, etc.) that exist within the project area or could be affected by the project.
- J. Copies of any available plans for the existing facility as well as documentation of any changes made since the original construction.
- K. A brief description, photographs and/or sketches of any obvious changes to the property that might affect the integrity of archaeological deposits, such as extensive filling, installation of driveways, stripping or grading, prior demolition of buildings, or installation of utilities, such as water or sewer lines, septic tanks, leach field, wells or cisterns.
- L. Documentation of the presence of former sites at the same locations, but where visible evidence is no longer immediately evident. Documentation should provide information about how and when changes came about. Examples include the sites of former residences, outbuildings, commercial or industrial building or facilities. Loss during prior floods may be particularly relevant for FEMA-related projects.
- M. Documentation of any large-scale landscape changes that may have occurred during the past 200 years, such as project areas being located in recently-developed floodplains, areas of prior flood scouring or erosion, landslides, etc.
- N. Any information about locally known or reported early historic or Indian archaeological sites in or close to the project area.

OCT 25 2002  
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**FEDERAL EMERGENCY MANAGEMENT AGENCY**  
**Region I**  
**J.W.McCormack Post Office &**  
**Courthouse Building, Room 442**  
**Boston, MA 02109**

October 23, 2002

James McConaha,  
Director and Historic Preservation Officer  
Division of Historic Records  
State of New Hampshire  
19 Pillsbury Street  
Concord, NH 03301-3570

Dear Mr. McConaha:

Enclosed please find a copy of the "Programmatic Agreement" for New Hampshire. This signed document is being forwarded for your records, as requested by William A. Kennedy, Jr., Regional Environmental Officer, FEMA Region I.

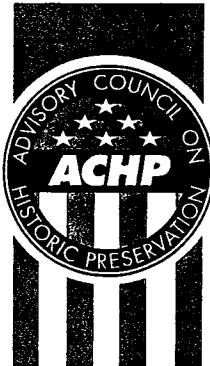
Should you have any questions, please contact Bill Kennedy at (978) 461-5610.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. L. O'Neil".

E. L. O'Neil, Environmental Specialist

00252002



September 25, 2002

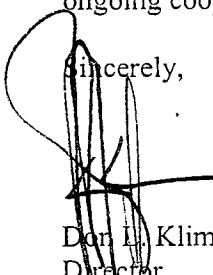
William A. Kennedy, Jr.  
Regional Environmental Officer  
FEMA Region 1  
J. W. McCormack POCH  
Boston, MA 02109-4595

Re: Statewide Programmatic Agreements  
for Vermont and New Hampshire

Dear Mr. Kennedy:

Recently we received your request for our signature on the Statewide Programmatic Agreements (PAs) for Vermont and New Hampshire. Please be advised that although FEMA coordinated their efforts with Council staff, we had not formally entered into consultation for the development of these PAs. While our staff has provided informal technical guidance, we did not notify the Director of FEMA that we would participate in consultation per Section 800.6(a)(1)(iii) for either agreement, and thus, were not formally participating as a signatory to the agreements. We have, however, agreed to sign these two agreements to avoid any delay in the PAs taking effect. Should you have any questions about the Council's involvement in any additional agreements that are currently under development in the Northeast, please feel free to contact either Karen Theimer Brown or Laura Henley Dean at 202-606-8505. We appreciate your ongoing cooperation.

Sincerely,

  
Don D. Klima  
Director  
Office of Federal Agency Programs

Enclosures

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 809 • Washington, DC 20004  
Phone: 202-606-8503 • Fax: 202-606-8647 • [achp@achp.gov](mailto:achp@achp.gov) • [www.achp.gov](http://www.achp.gov)